



Walmart US

Scott Morris, SVP Food/Consumables Private Brands

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February 25, 2021

The Honorable Raja Krishnamoorthi
Chairman
Subcommittee on Economic and Consumer Policy
U.S. House of Representatives Committee on Oversight and Reform
2157 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Krishnamoorthi,

I am writing in response to your February 11, 2021 and November 6, 2019, letters to Walmart Inc. (“Walmart” or the “Company”), regarding the investigation of the Subcommittee on Economic and Consumer Policy (“Subcommittee”) into baby foods. Walmart is committed to offering parents high quality private brand baby food products. As a grocer/retailer, Walmart has well defined specifications for our suppliers of private brand baby food, and is continuously reviewing its quality assurance and compliance procedures and systems, including its supplier management process, to identify additional steps we can take to continue earning customer trust in our private brands.

As an initial matter, Walmart believes it is important that the record before the Subcommittee accurately reflect Walmart’s engagement with the Subcommittee with respect to its investigation into the presence of certain metals in baby foods. Both the February 11, 2021, letter to Walmart and the Staff Report titled *Baby Foods Are Tainted with Dangerous Levels of Arsenic, Lead, Cadmium, and Mercury*, released on February 4, 2021 (the “Subcommittee Staff Report”) describe Walmart as refusing to comply with the Subcommittee’s investigation. Walmart respectfully disagrees with the Subcommittee’s characterization of the Company’s efforts to respond to its inquiry. First, when the Subcommittee sent its initial letter of November 6, 2019, seeking certain documents and information related to the testing of baby food to Walmart, it was twice sent to an incorrect email address. No one at Walmart was aware of the Subcommittee’s inquiry in general or the letter to Walmart until February 10, 2020, when Subcommittee staff sent the letter to a different recipient at Walmart. At this point, Walmart responded promptly, contacting the Subcommittee on February 12, 2020, and informing Subcommittee staff that the Company had not received its previous communications. Further, Walmart made clear that the Company intended to assist the Subcommittee in its inquiry and submit a substantive response, which the Company submitted on February 27, 2020.¹

In the February 27, 2020 response, we explained a key point: while Walmart sells a private brand infant and baby food in its stores, Parent’s Choice and Parent’s Choice Organic, Walmart is a retail grocer, not a manufacturer of infant and baby food products. Like other major U.S. grocers which also carry a private label baby food brand, Walmart contracts with leading infant and baby food manufacturers to

¹ See February 27, 2020, letter to the Subcommittee on Economic and Consumer Policy (attached as Ex. A).



manufacture and supply Walmart's private brand baby food products. In most cases, these suppliers are established producers of infant and baby food products and many of these companies provide similar private label products to other retailers. These suppliers of Walmart's Parent's Choice private brand infant and baby food products—like all other Walmart food suppliers—are contractually obligated to supply products that comply with all applicable laws and regulations, including the U.S. Food and Drug Administration (FDA) regulations and guidance. This includes, but is not limited to, all regulations requiring product specifications and Walmart holds manufacturers accountable for compliance with these requirements.

In addition to these contractual obligations, the February 27, 2020 response explained that suppliers of Walmart's private brand infant and baby products must comply with other requirements as well to ensure the quality of these foods. For example, and again as explained in the February 27, 2020 response, Walmart food and beverage manufacturers must comply with the Global Food Safety Initiative² ("GFSI") requirements, which are explained in more detail below. On top of the GFSI, Walmart also establishes finished good specifications for its private brands products, including its infant and baby foods sold under the Parent's Choice label. For infant and baby foods, suppliers of the Parent's Choice products are required to meet specifications that are at or below the limits established by the FDA through regulations or guidance.

Further, Walmart reviewed the *Healthy Babies Bright Futures* report issued in October 2019 that the Subcommittee referenced in its November 6, 2019 letter. In the Company's February 27, 2020 response, we noted that, of the dozens of baby food products listed in the *Healthy Babies Bright Futures* report, only seven were Walmart private brands products.³ According to the test results listed in that report, the metals in those seven products *were within guidance levels set by FDA – and some of these listed values were not detectable*. In response to Request 5 of the November 6, 2019 letter, we stated in our February 27, 2020 letter that none of the Parent's Choice private brand suppliers have requested the initiation of any recall actions for baby food products for having elevated levels of heavy metals.

In an email to Subcommittee staff transmitting the Company's February 27, 2020 response to the Subcommittee, we noted that the Company looked forward to working with the Subcommittee and would welcome the opportunity to meet with the Subcommittee staff to discuss our infant and baby food products. Contrary to the statement in the Subcommittee's February 11, 2021 letter that Walmart was attempting to "evade responsibility" by clarifying in our February 27, 2020 response that Walmart is not a baby food manufacturer, the Company was merely trying to ensure that the Subcommittee understood how the steps it takes as a grocer/retailer to ensure food safety are different from the types of steps suppliers and manufacturers of food products for Walmart must take. These different steps to ensure compliance with specifications and applicable FDA regulations and guidance reflect the very different roles in the food supply chain that grocers and food manufacturers play. For instance, the Subcommittee Staff Report focused specifically on baby food manufacturers – not grocers or retailers, like Walmart.⁴ After submitting its February 27, 2020 response to the Subcommittee, Walmart did not receive any follow-up from the Subcommittee either relating to the content of our letter or to our offer to meet with the Subcommittee staff.

Walmart takes seriously its engagement with Congress and endeavors to respond to requests it receives and provide information to Members and Committees – as it did in its response to the

² For more information regarding the GFSI, please see <https://mygfsi.com/>.

³ The following Parent's Choice food items were mentioned in the *Healthy Babies Bright Future* report: Organic Infant With Iron Milk-Based Powder; Carrot – Stage 2; Sweet Potato – Stage 1; Organic Butternut Squash Puree – Stage 2; Organic Strawberry, Carrot & Quinoa Puree – Stage 2; Organic Strawberry Rice Rusks – Stage 2; Little Hearts Strawberry Yogurt Cereal Snack – Stage 3.

⁴ Based on the content of the Subcommittee Staff Report, it appears that Walmart is the only grocer/retailer with a private brand baby food that received a request for information from the Subcommittee, although many U.S. grocers also offer a private label baby food product.



Subcommittee's November 6, 2019 letter. In order to further assist the Subcommittee, Walmart is now providing additional information to supplement the information we provided previously. Again, as a grocer/retailer, the types of steps Walmart takes to ensure the safety of the infant and baby food on its shelves are different than those taken by a manufacturer, which makes those food products. These steps reflect and are informed by the changes Congress made in 2011 to the food safety laws when it passed the Food Safety and Modernization Act ("FSMA"). FSMA created a new approach to food safety in the U.S. by shifting focus from reacting to food safety problems to establishing processes and preventative controls to reduce these problems in the first place. Set forth below is a narrative description of the robust framework of policies and processes that Walmart has established as a grocer and requires its private brand suppliers to meet to help ensure the safety of those products. Included in this description is a discussion of the specifications Walmart has established relating to heavy metals for infant and baby food products offered under the Parent's Choice and Parent's Choice Organic private brands.

GFSI

Before a private brand food supplier or manufacturer can contract with Walmart, it must first be certified to a GFSI-benchmarked audit program. This requirement is noted at page eight of the Food Safety Requirements for Food and Beverage Suppliers, provided to the Subcommittee on February 27, 2020.

The purpose of the GFSI, and its audit programs, is to assess the food safety management systems of food facilities to ensure they are processing safe food products for consumers. GFSI approves different auditing platforms as meeting its criteria, as defined in the GFSI Guidance Documents. During the certification process, it is our understanding that auditors review a supplier's policies and procedures and production processes, inspect its facilities, and examine facility records. These audits are conducted by an independent, third-party auditor. Walmart suppliers (including suppliers of Walmart's Parent's Choice and Parent's Choice Organic products) are required to submit verification of GFSI certification on an annual basis.

Walmart was the first nationwide U.S. grocery chain in 2008 to require GFSI certification of private brand suppliers. We have since expanded this requirement to many of the international markets in which we operate. GFSI-benchmarked certification is important because it demonstrates that a supplier has the appropriate, science-based food safety management systems in place. Testing of finished goods alone cannot ensure the safety of a food product, as it can only ever be a sampling exercise; rather, a company's record of continued compliance with good manufacturing processes and food safety procedures, as demonstrated through an accredited, third party, annual food safety assessment, helps to verify the efficacy of ongoing food safety management.

Walmart Supplier Policies, Specifications, and Contractual Obligations

In addition to GFSI certification, we require that our private brand suppliers, including those manufacturers that supply the Parent's Choice and Parent's Choice Organic baby food products, adhere to finished good specifications established by Walmart.

As the Subcommittee accurately noted in its Staff Report, the FDA has not issued requirements or guidance for limits of heavy metals in all types of infant and baby food products. Specifically, the FDA's guidance on heavy metals addresses certain types of baby foods – primarily, infant cereal, rice based snacks and juice products. Consequently, there are a host of other types and categories of baby food products for which the FDA has not issued guidance or regulations relating to heavy metals – namely, jarred, pureed fruit and vegetable products that do not contain rice. In the absence of guidance from FDA on these other types of baby food products, Walmart's Food Safety and Compliance team, working with a third-party microbiology expert in food safety, has independently established heavy metal limits by category of infant



and baby food: dry infant food, wet infant food, and infant formula where these are deemed appropriate. The heavy metal limits established by the Walmart Food Safety team (whether in accordance with the FDA's guidance or independently established with assistance from the third party food safety expert) are included in the finished goods specifications which Walmart's baby food suppliers are required to meet.

Walmart's finished good specifications are maintained in a product life management system, the current version of which is called "ProSpec." Each private brand infant and baby food supplier is required to access ProSpec in order to upload certain information about the product it supplies, such as country of origin, product formulation and the like; each supplier is also required to select the category of baby food it is manufacturing for Walmart and, once the selection is made, ProSpec auto-populates the heavy metal limits that Walmart's Food Safety and Compliance team has established for that food category. Further, ProSpec allows a supplier to input additional limits and specifications that a supplier has developed for its own products that are in addition to those required by Walmart. ProSpec also contains other information required by Walmart's US Food Safety and Compliance team, including labeling and source information. For instance, each supplier is required to disclose not only the identity of each supplier of raw ingredients used to manufacture the product, but the country of origin of each raw ingredient as well. The disclosure of this information in ProSpec by Walmart's suppliers assists the Walmart Food Safety team in quickly identifying and tracking potential risks in the event of a reported food borne illness in any of the raw ingredients. Before finished good specifications and other information are finalized for a particular supplier's baby food product, suppliers must review and approve the information in ProSpec, confirming that the products they supply to Walmart comply with these specifications.

Included in this production are the heavy metal limits established by Walmart's Food Safety and Compliance team for the categories of Parent's Choice food products that were listed in the *Healthy Babies Bright Futures* report (dry infant food, wet infant food, and infant formula) at WM-ECP-0000001 through WM-ECP-0000009. These materials include both current limits and previously established limits for these food products. We are also providing today an Excel Spreadsheet showing the heavy metal limits which are included in the finished good specifications provided in ProSpec for the seven Parent's Choice products listed in the *Healthy Babies Bright Futures* report. These are provided at WM-ECP-0000024. For the convenience of the Subcommittee, we are excerpting the relevant current requirements for heavy metal specifications for the products listed in the *Healthy Babies Bright Futures* report in a chart below. With respect to heavy metals limits established by Walmart, which are part of the chemical specifications, Walmart's specifications are either equal to or more stringent than the current FDA requirements or those standards listed in draft guidance.

Shelf-Stable Juices	UOM	Accept
Inorganic Arsenic*	ppb	≤10
Lead*	ppb	≤23

Dry Baby Food	UOM	Accept
Inorganic Arsenic	ppb	≤100
Lead*	ppb	≤50

Wet Baby Food	UOM	Accept
Arsenic*	ppb	≤23
Lead*	ppb	≤50

* These limits apply to those baby food products that contain juice or nectars (fresh or from concentrate) from apples, pears, grapes, applesauce, or pear puree.



Finally, the contracts between Walmart and the suppliers of its private brand infant and baby foods require that suppliers comply with Walmart's standards and are in compliance with applicable laws and regulations relating to manufacturing, sourcing, distribution and sale of merchandise. We are also providing today a template supplier agreement in the accompanying production at WM-ECP-0000010 through WM-ECP-0000023.

In Requests 3 and 4, the Subcommittee requested that we provide test reports and documents related to specific test results for the presence of contaminants in our Company's baby food products. First, the Subcommittee's reference to "contaminants" is misplaced as we interpret this to suggest something that has been improperly introduced into the product. The heavy metals, which were the subject of the *Healthy Babies Bright Futures* report, and the Subcommittee investigation, occur naturally in the air, water, and soil. In addition, we are interpreting this request to apply to Walmart's private brand Parent's Choice baby food products, and not all baby food products we sell in our stores. Like many other grocers/retailers, we do not require our private brand suppliers (or their suppliers of raw materials) to submit all test reports or test results to our Company in the ordinary course of business. Rather, as we explained above, we require our suppliers to demonstrate the effectiveness of their food safety management systems through continued certification by GFSI and meet the finished good specifications, including for heavy metals in baby foods, that Walmart establishes. In the event a private brand manufacturer supplies Walmart with a non-compliant product they would be in breach and can be terminated. If the non-compliant product presents a health and safety concern the product can be recalled.

FDA Regulations and Guidance

Walmart was glad to see that the FDA issued final guidance for inorganic arsenic in infant rice cereal, and we support the agency's ongoing efforts to monitor elements in baby food items. As we explained above, in the absence of FDA regulations or guidance, Walmart (like other grocers/retailers) develops limits and specifications for its suppliers where appropriate. In response to Request 8, Walmart supports the FDA undertaking a collaborative process to establish science-based standards for infant and baby foods.

In addition to supporting the FDA's efforts in this regard, as mentioned above, Walmart is continuously reviewing its quality assurance and compliance procedures and systems, including its supplier management process, to identify additional steps we can take to continue earning customer trust in our private brands. As described above, Walmart has well defined specifications for our suppliers of baby food, and we are evaluating our processes for how suppliers meet those specifications. We are committed to offering parents high quality private brand baby food products.

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As has been noted in our February 27, 2020 response to your November 6, 2019 letter, and in conversations this week with Subcommittee staff, Walmart is committed to assisting the Subcommittee in its inquiry. If you have additional questions about the material provided today, we would welcome further discussion with the Subcommittee regarding these topics.

Production of this information is not intended to constitute a waiver of the attorney-client, attorney work product, or any other applicable rights or privileges in this or any other forum. Walmart expressly reserves its rights in this regard. In addition, certain materials in this production contain highly sensitive information—including confidential, proprietary, and/or trade secret, information, and such information has been so designated under the Committee on Oversight and Reform's written protocol for handling sensitive personal and commercial information. Accordingly, Walmart requests that such information,



WM-ECP-0000001 through WM-ECP-0000024, be kept confidential by the Subcommittee and its staff. Information and data produced in connection with this inquiry may also contain material non-public information that should be kept confidential. Notwithstanding the Committee's written protocol and our request that such information be kept confidential, we would ask that staff provide Walmart with notice and an opportunity to be heard before the Committee discloses any such information or data to third parties to identify any concerns and, if applicable, seek protections to prevent further dissemination.

Please do not hesitate to contact us if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott Morris", with a long horizontal line extending to the left.

Scott Morris, Senior Vice President
Food/Consumables - Private Brands